

Senate Daily Reader

Saturday, February 21, 2004

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State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0384

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1053** - 02/06/2004

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to increase liquidated court costs.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 23-3-52 be amended to read as follows:

4 23-3-52. In addition to any other penalty, assessment, or fine provided by law, there shall
5 be levied liquidated costs in the amount of ~~twenty-seven~~ thirty dollars for partial reimbursement
6 to state government and its subdivisions for law enforcement and judicial expenses incurred in
7 providing the personnel, training, and facilities relative to the criminal justice system and to the
8 911 emergency reporting system, on each conviction for the following:

9 (1) Violation of state statutes or regulations having criminal penalties; or

10 (2) Violation of county or municipal ordinances.

11 If a fine is suspended in whole or in part, the liquidated costs for law enforcement and
12 training may not be reduced, except that the judge may waive all or any part of the payment of
13 liquidated costs which would work a hardship on the person convicted or on the person's
14 immediate family.

15 Section 2. That § 23-3-53 be amended to read as follows:



1 23-3-53. After a determination by the court of the amount due, the clerk of courts shall
2 collect the amount due and transmit such amount monthly to the state treasurer. The state
3 treasurer shall place ~~seventeen~~ twenty dollars of the ~~twenty-seven-dollar~~ thirty dollar fee into
4 the law enforcement officers training fund, six dollars of the ~~twenty-seven-dollar~~ thirty dollar
5 fee into the court appointed attorney and public defender payment fund, two dollars of the
6 ~~twenty-seven-dollar~~ thirty dollar fee into the court appointed special advocates fund, one dollar
7 of the ~~twenty-seven-dollar~~ thirty dollar fee into the 911 telecommunicator training fund, and one
8 dollar of the ~~twenty-seven-dollar~~ thirty dollar fee into the abused and neglected child defense
9 fund.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

400J0420

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1068** - 02/09/2004

Introduced by: The Committee on Appropriations at the request of the Bureau of
Administration

1 FOR AN ACT ENTITLED, An Act to establish a fund for the payment of extraordinary
2 litigation expenses, to make an appropriation therefor, and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is established in the state treasury the extraordinary litigation fund. The
5 fund shall be maintained separately and administered by the Bureau of Administration. The fund
6 may be used for plaintiff attorney fee awards, retention of outside counsel, or other
7 extraordinary litigation expenses not otherwise eligible to be paid under § 3-22-1. Unexpended
8 money and any interest that may be credited to the fund shall remain in the fund. The
9 extraordinary litigation fund is hereby continuously appropriated and shall be budgeted through
10 the informational budget process. The creation and funding of this fund does not constitute a
11 waiver of the state's sovereign immunity.

12 Section 2. There is hereby appropriated from the general fund the sum of one million six
13 hundred fifty thousand dollars (\$1,650,000) to the extraordinary litigation fund for payment of
14 eligible expenses.

15 Section 3. The commissioner of the Bureau of Administration shall approve vouchers for



1 payment of extraordinary expenses and the state auditor shall draw warrants to pay expenditures
2 authorized by this Act.

3 Section 4. Whereas, this Act is necessary for the support of the state government and its
4 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
5 full force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0395

HOUSE ENGROSSED NO. **HB 1073** - 01/28/2004

Introduced by: The Committee on State Affairs at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to establish a consumer compensation and education fund
2 related to telecommunication services and to provide for expenditures from the fund.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The commission shall establish a consumer compensation fund. The fund shall be used to
7 compensate consumers who paid for telecommunications services that a telecommunications
8 company failed to provide or for consumer education. Any civil fines collected pursuant to
9 §§ 49-31-7.4, 49-31-38, and 49-31-38.1 shall be credited to the consumer compensation fund
10 which is hereby established in the state treasury. Any interest earned on money in the fund shall
11 be deposited in the fund. The money is continuously appropriated to the use of the commission
12 to compensate consumers or provide consumer education. The commission shall promulgate
13 rules, pursuant to chapter 1-26, regarding procedures on how consumers may obtain
14 compensation from the fund and regarding methods for consumer education.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

804J0146

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1091** - 02/04/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Wick, Adelstein, Buckingham, Burg, Cutler, Frysliie, Garnos, Novstrup, Peterson (Bill), Peterson (Jim), Schafer, Valandra, Van Gerpen, and Weems and Senators Schoenbeck, Albers, Apa, Brown, Dennert, and Moore

1 FOR AN ACT ENTITLED, An Act to extend the fifty percent tuition privilege for National

2 Guard members to include graduate study.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 33-6-5 be amended to read as follows:

5 33-6-5. Any member of the National Guard of the State of South Dakota ~~who is a resident~~
6 ~~of the State of South Dakota shall~~ is, upon compliance with all the requirements for admission;
7 and subject to the provisions of § 33-6-7, ~~be entitled to a benefit as prescribed by this Act to~~
8 attend and pursue any ~~undergraduate~~ course or courses in any state educational institution under
9 the control and management of the Board of Regents ~~upon the payment of only fifty percent of~~
10 ~~the charges for tuition. In no event shall eligible national guardsmen be entitled to more than~~
11 ~~four academic years under §§ 33-6-5 to 33-6-8, inclusive. The Board of Regents shall maintain~~
12 ~~an annual record of the number of participants and the tuition dollar value of such participation.~~
13 Any resident enrolled in a program leading towards a baccalaureate degree is entitled to a



1 benefit of fifty percent of the in-state resident tuition to be paid or otherwise credited by the
2 Board of Regents. Any resident enrolled in a program leading towards a graduate degree or any
3 nonresident enrolled in a program leading towards a baccalaureate or graduate degree is entitled
4 to a benefit of fifty percent of the in-state resident tuition to be paid to the institution by the
5 Department of Military and Veterans Affairs. The benefits established under §§ 33-6-5 to 33-6-
6 8, inclusive, and the provisions of this Act may not exceed one hundred twenty-eight credit
7 hours towards a baccalaureate degree and thirty-two credit hours towards a graduate degree.

8 Section 2. That chapter 33-6 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Notwithstanding the provisions of § 13-55-23, eligible national guard members enrolled in
11 courses under the control and management of the Board of Regents not subsidized by the
12 general fund are entitled to a benefit of fifty percent of the in-state resident tuition to be paid to
13 the institution by the Department of Military and Veterans Affairs.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

733J0519

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1123** - 02/18/2004

Introduced by: Representatives Michels and Konold and Senators Knudson and Bogue

1 FOR AN ACT ENTITLED, An Act to authorize banks to be organized as limited liability
2 companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivision (1) of § 51A-1-2 be amended to read as follows:

5 (1) "Bank," any corporation or limited liability company, organized pursuant to chapter
6 47-34A, authorized under this title to engage in the business of banking or in the
7 combined business of a bank and trust company or in the combined business of a
8 bank with trust powers;

9 Section 2. That chapter 51A-3 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A bank may be organized as a limited liability company. The commission shall promulgate
12 rules pursuant to chapter 1-26, consistent with Title 51A, for the organization, management,
13 extension of its charter, and general administration of a bank that is organized as a limited
14 liability company. The rules shall facilitate the organization and capital structure, the offering
15 of trust business and the ability to develop branch bank and drive-in facilities, the offering of



1 remote service banking and bank services, the acceptance of deposits and the making of
2 investments, the offering of safe deposit and safe keeping protocols, the making of loans, the
3 reorganization of the limited liability company bank, and the operation of a bank organized as
4 a limited liability company to operate on an equal and parity basis with a bank organized as a
5 corporation.

6 Section 3. That § 10-43-10.1 be amended to read as follows:

7 10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined
8 in the Internal Revenue Code, as amended, and in effect on January 1, 2003, and reportable for
9 federal income tax purposes for the taxable year, but subject to the adjustments as provided in
10 §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return
11 pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 1997, net income shall
12 be computed in the same manner and in the same amount as if that institution had continued to
13 file its federal tax return without making the election and the financial institution shall continue
14 to be treated as a separate corporation for the purposes of this chapter. If a financial institution
15 is organized as a limited liability company, the limited liability company shall be treated as a
16 separate corporation for the purpose of this chapter.

17 Section 4. That § 10-43-10.3 be amended by adding thereto a NEW SUBDIVISION to read
18 as follows:

19 For those financial institutions organized as limited liability companies, imputed federal
20 income taxes in an amount equal to the taxes that would have been paid on net income as
21 defined in § 10-43-10.1 had the financial institution elected to file as a subchapter C corporation
22 under the Internal Revenue Code.

23 Section 5. That § 47-34A-211 be amended to read as follows:
24

1 47-34A-211. (a) A limited liability company, and a foreign limited liability company
2 authorized to transact business in this state, except a bank organized pursuant to section 2 of this
3 Act, shall deliver to the secretary of state for filing an annual report that sets forth:

- 4 (1) The name of the company and the state or country under whose law it is organized;
- 5 (2) The address of its registered office and the name and address of its registered agent
6 for service of process in this state;
- 7 (3) The address of its principal office;
- 8 (4) The names and business addresses of any managers;
- 9 (5) The dollar amount of the total agreed contributions to the limited liability company.

10 (b) Information in an annual report must be current as of the date the annual report is signed
11 on behalf of the limited liability company.

12 (c) The first annual report must be delivered to the secretary of state concurrent with the
13 filing of the articles of organization. Subsequent annual reports must be delivered to the
14 secretary of state before the first day of the second month following the anniversary month of
15 the filing date.

16 (d) If an annual report does not contain the information required in subsection (a) or the fees
17 required by § 47-34A-212, the secretary of state shall promptly notify the reporting limited
18 liability company or foreign limited liability company and return the report to it for correction.
19 If the report is corrected to contain the information required in subsection (a) or the fees
20 required by § 47-34A-212 and delivered to the secretary of state within thirty days after the
21 effective date of the notice, it is timely filed.

22 Section 6. That § 51A-1-2 be amended by adding thereto NEW SUBDIVISIONS to read as
23 follows:

24 "Articles of incorporation," articles of incorporation for a bank organized by incorporators

1 as a corporation pursuant to chapters 47-2 to 47-9, inclusive, and articles of organization for a
2 bank organized by organizers or members as a limited liability company pursuant to chapter 47-
3 34A;

4 "By-laws," by-laws for a bank organized by incorporators as a corporation pursuant to
5 chapters 47-2 to 47-9, inclusive, and operating agreement for a bank organized by organizers
6 or members as a limited liability company pursuant to chapter 47-34A;

7 "Stockholder," a shareholder of a bank organized by incorporators as a corporation pursuant
8 to chapters 47-2 to 47-9, inclusive, and a member for a bank organized by organizers or
9 members as a member as a limited liability company pursuant to chapter 47-34A;

10 "Board of directors," board of directors for a bank organized by incorporators as a
11 corporation pursuant to chapters 47-2 to 47-9, inclusive, and a manager for a manager-managed
12 bank or a member for a member-managed bank organized as a limited liability company
13 pursuant to chapter 47-34A;

14 "Stock," shares for a bank organized by incorporators as a corporation pursuant to chapters
15 47-2 to 47-9, inclusive, and member equity for a bank organized as a limited liability company
16 pursuant to chapter 47-34A;

17 "Dividends," distributions for a corporation organized by incorporators as a corporation
18 pursuant to chapters 47-2 to 47-9, inclusive, and distributions for a bank organized by organizers
19 or members as a limited liability company pursuant to chapter 47-34A.

20 Section 7. That § 51A-3-2 be amended to read as follows:

21 51A-3-2. ~~The~~ For a bank organized as a corporation, the articles of incorporation of a bank
22 ~~corporation~~ shall state, and for a bank organized as a limited liability company, the articles of
23 organization of a bank shall state:

24 (1) That the corporation or limited liability company is formed for the purpose of

engaging in the business of banking, or as a bank and trust company, or as a bank and trust department;

(2) The period for which such corporation or limited liability company is organized, not exceeding twenty years.

The name of such bank shall be different from the name of any other bank or trust company in the county of its place of business. ~~Its~~ The capital stock of a bank organized as a corporation shall be divided into shares of not less than ten nor more than one hundred dollars each. The members' equity of a bank organized as a limited liability company shall be divided into units of not less than ten nor more than one hundred dollars each.

Section 8. That § 51A-3-5 be amended to read as follows:

51A-3-5. ~~The~~ For a bank organized as a corporation, the original issue of bank stock, and for a bank organized as a limited liability company, the original issue of members' equity, shall be sold at a price of not less than twenty percent in excess of its par value and paid for in full in lawful money of the United States. The excess over the par value shall be credited on the books of the bank to the surplus.

Section 9. That § 51A-3-6 be amended to read as follows:

51A-3-6. One-tenth of the net profit for any dividend period shall be carried to the surplus fund until such fund shall amount to twenty percent of the capital stock or members' equity. Any losses sustained in excess of undivided profits may be charged to the surplus account, but no dividends shall thereafter be declared or paid until the surplus fund shall amount to twenty percent of the capital stock or members' equity.

Section 10. That § 51A-5-6 be amended to read as follows:

51A-5-6. It is lawful for any national bank to engage in trust business in this state to the extent authorized by the laws of the United States, without incorporating or organizing under

1 the laws of this state, but ~~they~~ a national bank shall otherwise comply with and be subject to all
2 laws of this state which are applicable to state banks engaged in trust business including such
3 examinations as may be deemed necessary, except that the authority of the commission and the
4 director shall apply to their trust business only. The director may accept in lieu of an
5 examination conducted under ~~his~~ the director's direction, any report of examination conducted
6 by the appropriate federal regulatory agency.

7 Section 11. That § 51A-12-2 be amended to read as follows:

8 51A-12-2. Except as otherwise provided in this title, no bank organized as a corporation or
9 limited liability company may loan, or otherwise extend credit, to any corporation, partnership,
10 or individual, an amount greater than the sum of:

11 (1) Twenty percent of its capital stock or members' equity and surplus; and

12 (2) Ten percent of its undivided profit.

13 Such limit shall be determined for each calendar quarter on the basis of the bank's quarterly
14 report of condition for the immediately previous calendar quarter.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0120

HOUSE ENGROSSED NO. **HB 1145** - 02/12/2004

Introduced by: Representatives Dykstra, Haverly, McCaulley, and Van Gerpen and Senators Dempster, Duenwald, Kelly, Knudson, Koskan, and Symens

1 FOR AN ACT ENTITLED, An Act to establish the South Dakota entrepreneur support program
2 and to provide for its funding and disbursement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
5 follows:

6 There is hereby created within the revolving economic development and initiative fund,
7 created in § 1-16G-3, the South Dakota entrepreneur support program. The purpose of the
8 program is to make loans to South Dakota entrepreneurs and South Dakota start-up businesses
9 to develop and promote new business activity and to create employment in the state.

10 Section 2. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
11 follows:

12 For purposes of this Act, the term, start-up business, means any new business venture in the
13 technology, communications, service, or manufacturing sector.

14 Section 3. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
15 follows:



1 The Board of Economic Development shall designate up to three million dollars of the
2 money in the revolving economic development and initiative fund for the purposes of the South
3 Dakota entrepreneur support program.

4 Section 4. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Board of Economic Development shall administer the South Dakota entrepreneur
7 support program and make loans under the following terms:

8 (1) No loan may be for less than thirty thousand dollars or for more than fifty thousand
9 dollars;

10 (2) Each loan applicant shall provide for a matching amount of funds available from
11 non-state sources equal to the amount of the loan. No in-kind amounts or services
12 may be included in the matching funds; and

13 (3) Each loan may be made on an unsecured basis unless security is available. The loan
14 shall be set up for repayment of the principle plus accrued interest beginning on the
15 third anniversary date of the loan approval date with a balloon payment after the
16 seventh anniversary of the loan anniversary date. However, the board may grant a
17 further two-year extension before repayment begins.

18 Section 5. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
19 follows:

20 An applicant for a loan pursuant to this Act shall meet the following criteria:

21 (1) An innovative business concept with a reasonable probability of creating a new
22 market or filling an existing market need;

23 (2) A three-year strategic plan for developing the business, creating jobs, and sourcing
24 qualified employees to execute the plan with sufficient justification to support the

1 amount of the request; and

2 (3) Demonstrable support from economic development and academic professionals or
3 business consultants who can provide advice and guidance to the applicant.

4 Section 6. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In connection with the administration of the South Dakota entrepreneur support program,
7 the Board of Economic Development may, pursuant to chapter 1-26, promulgate rules to:

8 (1) Set the application procedures for those who apply for loans from the fund;

9 (2) Establish criteria to determine how loan funds shall be awarded and distributed to
10 applicants;

11 (3) Govern the use of proceeds of the loans; and

12 (4) Establish criteria for the terms and conditions upon which the loans shall be made.

13 Section 7. That § 1-16G-24 be amended to read as follows:

14 1-16G-24. Earnings on the revolving economic development and initiative fund, the South
15 Dakota entrepreneur program, and the value added agriculture ~~subfund~~ fund may be used for
16 the administrative costs of the Division of Finance of the Governor's Office of Economic
17 Development. Such earnings shall be expended in accordance with the provisions of Title 4 on
18 warrants drawn by the state auditor on vouchers approved by the commissioner of the
19 Governor's Office of Economic Development. Eligible expenses may not exceed total interest
20 earnings during the previous fiscal year prior to the deduction of loan losses for the same fiscal
21 year.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

535J0093

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1158 - 02/18/2004

Introduced by: Representatives Cutler, Cradduck, Garnos, Gillespie, Hennies, Michels, Murschel, Rounds, Schafer, and Van Gerpen and Senators Sutton (Dan), Abdallah, Albers, Duniphan, Earley, Ham-Burr, Moore, and Vitter

1 FOR AN ACT ENTITLED, An Act to prohibit the taking of certain pictures of another without
2 that person's consent and to provide a penalty therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No person may use a concealed camcorder, motion picture camera, or
5 photographic camera of any type, to secretly videotape, film, photograph, or record by electronic
6 means, any other person without clothing, or any other person under or through the clothing
7 being worn by that other person, for the purpose of viewing the body of, or the undergarments
8 worn by, that other person, without the consent or knowledge of that other person, with the
9 intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and
10 invade the privacy of that other person, under circumstances in which the other person has a
11 reasonable expectation of privacy. A violation of this section is a Class 1 misdemeanor.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

554J0548

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1227** - 02/11/2004

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Bradford, Bartling, Burg, Elliott, Engels, Gassman, Hargens, Kroger, Lange, Miles, Nesselhuf, Olson (Mel), Peterson (Jim), Sigdestad, Thompson, and Van Norman and Senators Koetzle and Nachtigal

1 FOR AN ACT ENTITLED, An Act to provide an exception to the fees that may be charged by
2 a notary public for certain instruments and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 18-1-9 be amended to read as follows:

5 18-1-9. ~~Notaries~~ A notary public may charge and receive a fee not to exceed ten dollars for
6 each instrument notarized, except that no notary public may charge a fee for notarizing a request
7 for an absentee ballot.

8 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
9 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
10 effect from and after its passage and approval.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

337J0082

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1228 -**
02/18/2004

Introduced by: Representatives Haverly, Christensen, Craddock, Cutler, Glenski, Hunhoff, Madsen, Michels, Miles, Murschel, Novstrup, O'Brien, Rave, and Sebert and Senators Olson (Ed) and Knudson

1 FOR AN ACT ENTITLED, An Act to provide for interstate contracts for the treatment of
2 individuals with mental illness or chemical dependency and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms in this Act mean:

5 (1) "Bordering state," Iowa, Minnesota, Montana, Nebraska, North Dakota, or Wyoming;

6 (2) "Treatment facility," an accredited prevention or treatment facility as defined in § 34-
7 20A-2 or an inpatient psychiatric facility as defined in § 27A-1-1.

8 Section 2. A bordering state or governmental entity of a bordering state may contract with
9 any appropriate treatment facility in South Dakota for the treatment of mental illness or
10 chemical dependency for residents of the bordering state. However, any such contract shall
11 conform to the requirements of this Act.

12 Section 3. No contract may be entered into under this Act for treatment to any person who:

13 (1) Is serving a sentence after conviction of a criminal offense;

14 (2) Is on probation or parole; or



1 (3) Is the subject of a presentence investigation.

2 Section 4. Any contract entered into under this Act between a bordering state or
3 governmental entity of a bordering state and a South Dakota treatment facility shall, at a
4 minimum:

5 (1) Describe the services to be provided;

6 (2) Establish responsibility for the costs of services;

7 (3) Establish responsibility for the costs of transporting individuals receiving services
8 under this Act;

9 (4) Establish responsibility for the transportation of individuals under this Act;

10 (5) Specify the duration of the contract;

11 (6) Specify the means of terminating the contract;

12 (7) Specify the terms and conditions for refusal to admit or retain an individual; and

13 (8) Identify the goals to be accomplished by the placement of an individual under this
14 Act.

15 Section 5. Any treatment facility in South Dakota may enter negotiations with appropriate
16 personnel of a bordering state to develop a contract that conforms to the requirements of this
17 Act. A contract with a bordering state shall enable the temporary placement in South Dakota by
18 a bordering state of a person who is on an emergency hold or who has been involuntarily
19 committed as mentally ill or chemically dependent as determined by the bordering state. Any
20 person committed by a bordering state or on emergency hold from a bordering state and who
21 is placed in a South Dakota facility continues to be in the legal custody of the bordering state
22 and shall be returned to the bordering state prior to release from emergency hold or involuntary
23 commitment. The bordering state's laws governing commitment criteria, length of commitment,
24 hearings, reexaminations, and extension of commitment continue to apply to these bordering

1 state residents. The State of South Dakota is not responsible for treatment costs, legal
2 proceeding costs, or transportation costs. In all other aspects, a resident of a bordering state
3 placed in a South Dakota facility is subject to the laws of South Dakota. A contract under this
4 Act with a bordering state or bordering state governmental entity shall specify that responsibility
5 for payment for the cost of care and transportation for persons under this Act remains with the
6 contracting entity of the bordering state of which that person is a resident.

7 Section 6. No person placed in South Dakota from a bordering state under this Act may be
8 placed or transferred to the South Dakota Human Services Center.

9 Section 7. Whereas, this Act is necessary for the immediate preservation of the public peace,
10 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
11 effect from and after its passage and approval.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

708J0728

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1281** - 02/10/2004

Introduced by: Representative Cradduck and Senator Jaspers

1 FOR AN ACT ENTITLED, An Act to provide for certain property tax exemptions for business
2 incubators owned by nonprofits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any business incubator owned or leased and operated by a local economic development
7 organization is eligible for an exemption from certain property taxes as provided in this section.
8 The governing body of the county, municipality, school district, township, or any other political
9 subdivision of this state in which the property is located may approve a tax exemption by
10 resolution after a determination of eligibility, public notice, and a hearing. If any governing body
11 intends to grant more than one exemption for business incubators, the governing body shall
12 adopt a separate resolution for each business incubator within its jurisdiction. No governing
13 body may grant approval for the business incubator until all of the applicant's taxes have been
14 paid in full. If the property is leased to a business incubator, no governing body may grant
15 approval until all of the owner's property taxes on that property have been paid in full. Payment



1 of taxes under protest does not preclude approval. Prior to holding the hearing, the governing
2 body shall determine that the local economic development organization:

- 3 (1) Is a private, nonprofit corporation and is exempt from taxation pursuant to section
4 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code as of January 1,
5 2004;
- 6 (2) Is engaged in economic development and business assistance work in the area; and
- 7 (3) Owns and operates or will operate the business incubator.

8 The tax exemption described in this section applies only to the taxes levied by the governing
9 body approving the exemption over which the governing body has the ability to levy a property
10 tax upon.

11 Section 2. That § 13-13-20.4 be amended to read as follows:

12 13-13-20.4. The actual assessed valuation of any property given a reduced valuation
13 pursuant to §§ 10-6-35.1, 10-6-35.2, 10-6-35.4, 10-6-35.21, 10-6-35.22, 10-6-35.24, 10-6-35.25,
14 10-6-54, 10-6-55, 10-6-66, and 10-6-67 shall be used when calculating state aid to education.
15 For any property given a reduced valuation after November 1995, pursuant to §§ 10-6-35.1,
16 10-6-35.2, 10-6-35.4, 10-6-35.21, 10-6-35.22, 10-6-35.24, 10-6-35.25, 10-6-54, 10-6-55,
17 10-6-66, and 10-6-67 that has not previously received a reduced valuation pursuant to these
18 statutes, the portion of actual assessed valuation of the property used when calculating state aid
19 to education shall be twenty percent in the first year, forty percent in the second year, sixty
20 percent in the third year, eighty percent in the fourth year, and one hundred percent each year
21 thereafter. In addition, the actual assessed valuation of any property given exempt status
22 pursuant to section 1 of this Act shall be used when calculating state aid to education.

23 Section 3. That § 10-12-44 be amended to read as follows:

24 10-12-44. The county auditor in each school district shall raise additional revenue, for the

1 general fund and special education funds, from property taxes to compensate for tax abatement,
2 tax increment financing district, or discretionary formula as follows:

3 (1) For tax incremental districts created pursuant to chapter 11-9 and formed after
4 December 31, 1994, the county auditor shall levy an additional tax levy for an
5 amount not to exceed an amount equal to the sum of the levies in §§ 10-12-42 and
6 13-37-16 times the tax increment valuation as defined in § 11-9-1;

7 (2) For property subject to § 10-6-35.2, 10-6-35.12, 10-6-35.24, 10-6-35.25, 10-6-54,
8 10-6-55, or 10-6-67 the county auditor shall levy an additional tax levy for an amount
9 not to exceed the amount of taxes that were not collected due to the reduction in
10 valuation based on the maximum levies pursuant to §§ 10-12-42 and 13-37-16;

11 (3) For abated taxes the county auditor shall levy an additional tax levy for an amount
12 not to exceed the amount of the school district's portion of the taxes that were abated
13 pursuant to chapter 10-18 during the previous tax year;

14 (4) For properties given exempt status pursuant to section 1 of this Act.

15 The levies in this section are not subject to the referendum provision of § 10-12-43 and these
16 levies shall maintain the same proportion to each other as represented in the mathematical
17 relationship at the maximum levies pursuant to § 10-12-42.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

538J0699

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1282 - 02/11/2004

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives McCaulley, Bradford, Cutler, Haverly, Kraus, Rave, Rhoden, Schafer, Teupel, Thompson, and Weems and Senators Apa, Abdallah, and Jaspers

1 FOR AN ACT ENTITLED, An Act to prohibit recovery based on claims resulting from weight
2 gain, obesity, or a health condition resulting from long-term consumption of a qualified
3 product.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

6 (1) "Livestock," cattle, bison, swine, sheep, goats, horses, ratites, and captive cervidae;

7 (2) "Livestock producer," any producer of livestock;

8 (3) "Long-term consumption," the cumulative effect of the consumption of any qualified
9 product and not the effect of a single instance of consumption;

10 (4) "Qualified product," any food or drink as defined in section 201(f) of the Federal
11 Food Drug and Cosmetic Act (21 U.S.C. § 321(f)), in effect as of January 1, 2004,
12 and specifically including meat and meat products from livestock;

13 (5) "Seller," any person or entity lawfully engaged in the business of marketing,
14 distributing, advertising, or selling a qualified product;



1 (6) "Trade association," any association or business organization that is not operated for
2 profit, if two or more members are manufacturers, marketers, distributors, livestock
3 producers, advertisers, or sellers of a qualified product.

4 Section 2. No manufacturer, seller, trade association, livestock producer, or retailer of a
5 qualified product is subject to civil liability for injury or death in any case in which liability is
6 based on the individual's weight gain, obesity, or a health condition related to weight gain or
7 obesity, and the weight gain, obesity, or health condition results from the individual's long-term
8 consumption of a qualified product.

9 Section 3. Any civil action regarding a claim as set forth in section 2 of this Act that is
10 governed by the laws of South Dakota and that is pending on the date of the enactment of this
11 Act shall be subject to the terms of this Act.

12 Section 4. This Act may be cited as the Commonsense Consumption Act.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

555J0505

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1283** - 02/10/2004

Introduced by: Representatives Weems, Cutler, Hundstad, Lange, Novstrup, Peterson (Jim),
Schafer, Sigdestad, Thompson, Van Etten, and Van Gerpen and Senators de
Hueck, Greenfield, Kloucek, Kooistra, Moore, Schoenbeck, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to exempt certain purchases of material used in the
2 production of greenhouse, nursery, and ornamental plants from sales and use taxes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The purchase of any fertilizer, growth regulator, soil, container, and plant shine that is
7 directly used in the production of greenhouse, nursery, and ornamental plants intended to be sold
8 ultimately at retail within or without the State of South Dakota is hereby specifically exempted
9 from the tax imposed by chapter 10-45.

10 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The use in this state of any fertilizer, growth regulators, soil, containers, and plant shine
13 directly used in the production of greenhouse, nursery, and ornamental plants intended to be sold
14 ultimately at retail within or without the State of South Dakota is hereby specifically exempted



1 from the tax imposed by chapter 10-46.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

119J0566

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1307 - 02/19/2004

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Teupel, Klaudt, McCaulley, McLaughlin, and Peterson (Bill)
and Senators Knudson, Bogue, and McCracken

1 FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to education.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 13-13-10.1 be amended to read as follows:

4 13-13-10.1. Terms used in this chapter mean:

5 (1) "Average daily membership," the average number of resident and nonresident
6 kindergarten through twelfth grade pupils enrolled in all schools operated by the
7 school district during the previous regular school year, minus average number of
8 pupils for whom the district receives tuition, except pupils described in subdivision
9 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
10 average number of pupils for whom the district pays tuition;

11 (1A) Nonresident students who are in the care and custody of the Department of Social
12 Services, the Unified Judicial System, the Department of Corrections, or other state
13 agencies and are attending a public school may be included in the average daily
14 membership of the receiving district when enrolled in the receiving district. When



counting a student who meets these criteria in its general enrollment average daily membership, the receiving district may begin the enrollment on the first day of attendance. The district of residence prior to the custodial transfer may not include students who meet these criteria in its general enrollment average daily membership after the student ceases to attend school in the resident district;

(2) "Adjusted average daily membership," calculated as follows for all districts except those defined in subdivision (2A):

(a) For districts with an average daily membership of two hundred or less, multiply 1.2 times the average daily membership;

(b) For districts with an average daily membership of less than six hundred, but greater than two hundred, raise the average daily membership to the 0.8293 power and multiply the result times 2.98;

(c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

(2A) "Adjusted average daily membership," calculated as follows for districts larger than three hundred ninety-nine square miles and that serve grades kindergarten through twelfth grade:

(a) For districts with an average daily membership of one hundred thirty or less, multiply 1.3 times the average daily membership;

(b) For districts with an average daily membership of less than six hundred, but greater than one hundred thirty, raise the average daily membership to the 0.8284523 power and multiply the result times 2.9963;

(c) For districts with an average daily membership of six hundred or more, multiply 1.0 times their average daily membership;

- 1 (3) "Index factor," is the annual percentage change in the consumer price index for urban
2 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
3 the United States Department of Labor for the year before the year immediately
4 preceding the year of adjustment or three percent, whichever is less;
- 5 (4) "Per student allocation," for school fiscal year 2004 is \$3,967.88. Each school fiscal
6 year thereafter, the per student allocation is the previous fiscal year's per student
7 allocation increased by the index factor;
- 8 (5) "Local need," the per student allocation multiplied by the adjusted average daily
9 membership;
- 10 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
11 applying the levies established pursuant to § 10-12-42;
- 12 (7) "General fund balance," the unreserved fund balance of the general fund, less general
13 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
14 out of the general fund for the previous school fiscal year;
- 15 (8) "General fund balance percentage," is a school district's general fund balance divided
16 by the school district's total general fund expenditures for the previous school fiscal
17 year, the quotient expressed as a percent;
- 18 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
19 2000. However, the general fund base percentage can never increase and can never
20 be less than twenty percent;
- 21 (10) "Allowable general fund balance," the fund base percentage multiplied by the
22 district's general fund expenditures in the previous school fiscal year;
- 23 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
24 percentage points;

1 (12) "General fund exclusions," revenue a school district has received from the imposition
2 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
3 from gifts, contributions, grants, or donations; revenue a school district has received
4 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
5 general fund set aside for a noninsurable judgment.

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

580J0408

HOUSE ENGROSSED NO. **SB 66** - 02/19/2004

Introduced by: Senators Olson (Ed), Albers, Dempster, Earley, Ham-Burr, Reedy, and Sutton (Dan) and Representatives Olson (Mel), Adelstein, Hennies, Hunhoff, Sebert, Solum, and Thompson

1 FOR AN ACT ENTITLED, An Act to revise the definition of an abused or neglected child to
2 include exposure to the manufacturing of methamphetamines.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-8A-2 be amended to read as follows:

5 26-8A-2. In this chapter and chapter 26-7A, the term, abused or neglected child, means a
6 child:

7 (1) Whose parent, guardian, or custodian; has abandoned the child or has subjected the
8 child to mistreatment or abuse;

9 (2) Who lacks proper parental care through the actions or omissions of the child's parent,
10 guardian, or custodian;

11 (3) Whose environment is injurious to the child's welfare;

12 (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary
13 subsistence, supervision, education, medical care, or any other care necessary for the
14 child's health, guidance, or well-being;

15 (5) Who is homeless, without proper care, or not domiciled with the child's parent,



1 guardian, or custodian through no fault of the child's parent, guardian, or custodian;

2 (6) Who is threatened with substantial harm;

3 (7) Who has sustained emotional harm or mental injury as indicated by an injury to the
4 child's intellectual or psychological capacity evidenced by an observable and
5 substantial impairment in the child's ability to function within the child's normal
6 range of performance and behavior, with due regard to the child's culture;

7 (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the
8 child's parent, guardian, custodian, or any other person responsible for the child's
9 care; ~~or~~

10 (9) Who was subject to prenatal exposure to abusive use of alcohol or any controlled
11 drug or substance not lawfully prescribed by a practitioner as authorized by chapters
12 22-42 and 34-20B; or

13 (10) Whose parent, guardian, or custodian knowingly exposes the child to an environment
14 that is being used for the manufacturing of methamphetamines.

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

770J0748

HOUSE ENGROSSED NO. **SB 167** - 02/19/2004

Introduced by: Senators Jaspers, Bogue, Dennert, Diedrich (Larry), Duxbury, Greenfield, Kelly, Koskan, and Sutton (Dan) and Representatives Juhnke, Bartling, Davis, Deadrick (Thomas), Dykstra, Fryslie, Hundstad, Lintz, Olson (Ryan), Peterson (Jim), Rounds, Sigdestad, and Solum

1 FOR AN ACT ENTITLED, An Act to provide immunity from liability for certain owners of
2 anhydrous ammonia.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person tampering with or assisting in tampering with anhydrous ammonia
5 assumes the risk of personal injury, death, and any other economic or noneconomic loss or
6 damage arising from tampering with or assisting in tampering with anhydrous ammonia. An
7 owner of anhydrous ammonia is not liable to such person for personal injury, death, or any other
8 economic or noneconomic loss or damage arising out of tampering with or assisting in
9 tampering with anhydrous ammonia, except in any case in which such loss or damage was
10 caused by conduct of the owner that was willful, wanton, reckless, or grossly negligent.

11 Section 2. For purposes of this Act, the term, owner of anhydrous ammonia, means any
12 person who, for any lawful purpose:

13 (1) Owns anhydrous ammonia;

14 (2) Owns a container, equipment, or storage facility containing anhydrous ammonia;



1 (3) Is responsible for the installation or operation of a container, equipment, or storage
2 facility containing anhydrous ammonia;

3 (4) Sells anhydrous ammonia;

4 (5) Purchases anhydrous ammonia; or

5 (6) Operates or uses anhydrous ammonia containers, equipment, or storage facilities.

6 Section 3. For the purposes of this Act, the term, tampering, means unlawfully releasing,
7 transferring, or attempting to release or transfer anhydrous ammonia from its present container,
8 equipment, or storage facility to another container, equipment, or storage facility or the
9 subsequent transport of such anhydrous ammonia.

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

372J0770

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 188** - 02/17/2004

Introduced by: Senator Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to access to isolated
2 tracts of land.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 31-22-1 be amended to read as follows:

5 31-22-1. Every owner of an isolated tract of land containing at least ten acres not touched
6 by a passable public highway or smaller tract of land containing at least five acres used or
7 intended to be used in good faith in whole or in part for residential purposes is entitled to an
8 easement or right-of-way across adjacent lands to reach a public highway, which easement or
9 right-of-way may be secured as provided in this chapter. An isolated tract is further defined as
10 an area which is either inaccessible by motor vehicle because of natural barriers from all other
11 land owned by the owner of the isolated tract or is such an area which is not touched by a
12 passable public highway, which is in use or reasonably usable for motor vehicles—as
13 ~~distinguished from public highways existing only by operation of law.~~ A tract of land adjoining
14 a section line right-of-way for at least sixty-six feet is not an isolated tract if a passable road can
15 be built within the adjoining section line to connect to a passable public highway.



State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

745J0743

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 193** - 02/17/2004

Introduced by: Senator Dempster and Representative Sebert

1 FOR AN ACT ENTITLED, An Act to restrict the investment of insurers in certain investment
2 assets.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-27 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 An insurer may invest up to twenty percent of its admitted assets in any bonds, warrants,
7 or evidence of indebtedness described in §§ 58-27-11 and 58-27-12 and not rated pursuant to
8 § 58-27-108. The valuation of such investments shall be the amortized cost of the investments
9 or the market value of the investments, whichever is less.

